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BY ECF

Hon. Nancy Hershey Lord
United States Bankruptcy Court
Eastern District of New York
Conrad B. Duberstein Courthouse
271-C Cadman Plaza East, Suite 1595
Brooklyn, New York 11021

Re: Suparo International, Inc., v. Kedia, Adv. Proc. No. 14-01090 (NHL)

Dear Judge Lord:

I represent creditor Suparo International in the above adversary proceeding, and I write to inquire regarding the Court's post-trial ruling. Trial in this matter took place in July and August 2016, and the post-trial submissions were completed in January 2017. If the Court requires any other submissions from the parties, I respectfully request that the Court let us know.

Relatedly, I wish to call the Court's attention to a very relevant decision of the United States District Court for the Eastern District of New York in *Salim v. V.W. Credit, Inc.*, 577 B.R. 615 (E.D.N.Y. 2017).[1] In *Salim*, the debtor borrowed money for his automobile business ("Big Apple") from the creditor, secured by liens on all of Big Apple's assets and a personal guaranty from the debtor. *Id*. at 618-19. But after automobiles were sold, the debtor caused Big Apple to pay the proceeds to his mother and to other family members rather than to the secured creditor. *Id*. at 619-620. This conduct was found to be both willful, *id*. at 627, and malicious:

> Despite his affidavit, appellant's transfer of $335,000.00 to his mother clearly was in breach of his personal guaranty, and was wrongful and without just cause or excuse. Appellant does not dispute that VCI had a superior position to the proceeds of Big Apple's vehicle sales under the loan agreements. Furthermore, appellant has testified that he was aware that VCI had a senior secured interest in Big Apple's assets when he signed the guaranty. Even construing the evidence in

[1] Suparo's post-trial submission cited the Bankruptcy Court's decision in the *Salim* case, but that decision had not yet been affirmed by the District Court.

> favor of the nonmoving party, the court notes that the record does not provide any justification or excuse for the transfer of funds to appellant's mother. There is no evidence that transferring $335,000.00 away from a senior lender, VCI, to pay off a debt owed to a junior lender, appellant's mother, would benefit Big Apple or was otherwise justified.

Id. at 628 (internal record citations omitted). Finally, the District Court noted that, under the rule of *In re Alessi*, 405 B.R. 65 (Bankr. W.D.N.Y. 2009), a "deliberate and intentional refusal to pay sale proceeds despite a contractual provision requiring it to satisfied malice standard within the meaning of section 523(a)(6)." *Id*. at 628.

Respectfully Submitted,

Niall D. Ó Murchadha

cc: all counsel (via ECF)